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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/915,716	07/26/2001	Leslie C. Smith	3968.037	6561

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EXAMINER

DELCOTTO, GREGORY R

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 08/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/915,716

Applicant(s)

SMITH ET AL.

Examiner

Gregory R. Del Cotto

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5, 7-14 and 16-21 is/are pending in the application.
- 4a) Of the above claim(s) 1-3, 5 and 7-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13, 14 and 16-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-3, 5, 7-14, 16-21 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/22/04</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. Claims 1-3, 5, 7-14, and 16-21 are pending. Note that, the Examiner's Amendment sent in the Office action mailed 3/25/04 has been entered and the limitations are now present in the instant claims. If Applicant submits an amendment to the claims in response to this amendment, Applicant should not underline amendments to the claims made in the Examiner's Amendment since these limitations are present and have been read into the instant claims.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 7/23/04 has been entered.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-3, 5, and 7-12, drawn to a process for cleaning soiled garments or fabric materials, classified in class 8, subclass 137.
- II. Claims 13, 14, and 16-21 are drawn to a fragrance system, classified in class 510, subclass 101.

The inventions are distinct, each from the other because of the following reasons:

Inventions of Group I and Group II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the composition of Group II can be used in a materially different process such as in a method of cleaning hard surfaces.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with Christopher Kay on August 25, 2004, a provisional election was made with traverse to prosecute the invention of Group II, claims 13, 14, and 16-21. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-3, 5, and 7-12 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship

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must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim Rejections - 35 USC § 103

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 13, 14, and 16-20 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Iliff et al (US 5,412,958).

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Iliff et al teach a dry cleaning system particularly suited for employing supercritical CO₂ as the cleaning fluid consisting of a sealable cleaning vessel containing a rotatable drum adapted for holding a soiled substrate, a cleaning fluid storage vessel, and a gas vaporizer vessel for recycling used cleaning fluid. See Abstract. In a further embodiment, a smaller container is downstream of the main chamber and is preferably in-line with the liquid CO₂. The purpose of the container is to hold a means for imparting to the substrate cleaned by the cleaning vessel an aesthetic or commercially enhancing material soluble or dispersible in the dense or supercritical fluid, such as liquid CO₂. One of the principal but not sole, uses for this means for imparting an aesthetic or commercially enhancing material would be scenting, preferably vegetative matter containing essential oils. The vegetative matter can include flower petals, herbs, bark, leaves, from which can be extracted essential oils or other compounds soluble in liquid CO₂, such as camphor, menthol oils, orange oils, rose oils, and the like. See column 6, lines 45-69. Note that, the Examiner asserts that these oils as taught by Iliff et al would inherently have the same fragrance parameters as recited by the instant claims because Iliff et al teach fragrance ingredients which are the same as listed in the specification on page 4, lines 1-35 of the specification. Accordingly, the broad teachings of Iliff et al anticipate the material limitations of the instant claims.

Alternatively, even if the broad teachings of Iliff et al are not sufficient to anticipate the material limitations of the instant claims, it would have been nonetheless obvious to one of ordinary skill in the art to arrive at the claimed

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fragrance parameters of the composition in order to provide the optimum fragrance properties to the composition because Iliff et al teach that the amount and types of fragrances added to the composition may be varied.

Claims 13, 14, and 16-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murphy (US 6,313,079) in view of Iliff et al (US 5,412,958).

Murphy teaches a surfactant comprising a heterocyclic group that results in superior cleaning in a dry cleaning system. The surfactant can have one or more heteroatom and can result in reverse micelle formation in a densified gas like densified carbon dioxide. See Abstract. Optional additives may also be used in the composition and include anti-static agents and deodorizing agents. The deodorizing agent typically includes fragrances such as those described in US 5,784,905 which is incorporated by reference. US 5,784,905 teaches that typical fragrances or scents such as natural or synthetic oils and related products. See column 3, lines 50-60.

Murphy does not teach the specific fragrance ingredients nor a fragrance system containing CO₂, a fragrance system, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Iliff et al are relied upon as set forth above.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a fragrance system including orange oils in the composition taught by Murphy, with a reasonable expectation of success, because Iliff teaches the use of a fragrance system including orange oils in a

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similar CO₂ cleaning system, and further, Murphy teaches the use of essential oils and fragrances in general.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a fragrance system containing CO₂, a fragrance system, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable of success and similar results with respect to other disclosed components, because the broad teachings of Murphy in combination with Iliff suggest a fragrance system containing CO₂, a fragrance system, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Conclusion

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remaining references cited but not relied upon are considered to be cumulative to or less pertinent than those relied upon or discussed above.

Applicant is reminded that any evidence to be presented in accordance with 37 CFR 1.131 or 1.132 should be submitted before final rejection in order to be considered timely.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571) 272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gregory R. Del Cotto
Primary Examiner
Art Unit 1751

GRD
August 26, 2004